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In the United States Patent and Trademark Office

Appellants:	Jian Qin et al.	Docket No.:	15,105.1
Serial No.:	10/810,977	Group:	3761
Confirmation No:	9633	Examiner:	Jacqueline F. Stephens
Filed:	March 25, 2004	Date:	February 27, 2008
For:	PERMANENTLY WETTABLE SUPERABSORBENTS		

Reply Brief

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 41.41, Appellants respectfully submit this **Reply Brief** in response to Examiner Stephen's **Examiner's Answer** which was mailed December 27, 2007, and which pertains to the Appeal of the Examiner's **Final Rejection** of claims 22 – 36 which was mailed on March 23, 2007.

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Status of Claims

Claims 22 - 36 remain in the application with claims 22 - 36 being finally rejected.

Accordingly, claims 22 - 36 remain under appeal.

Grounds of Rejection to be Reviewed on Appeal**Ground 1**

Claims 22-26, 27, 29-32, 34, and 35 were rejected under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 3,989,586 issued to Bashaw et al. in view of U.S. Patent No. 5,494,611 issued to Howe.

Ground 2

Claims 28, 33, 36, and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,989,586 issued to Bashaw et al. in view of U.S. Patent No. 5,494,611 issued to Howe, as applied to claims 22 and 34 above and further in view of U.S. Patent No. 6,217,890 issued to Paul.

Argument**1. Section (10) Response to Argument - Hindsight**

In Section (10) of the Examiner's Answer mailed December 27, 2007, page 4, the Office alleges that with regard to Applicants' argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, the Office alleges that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. The Office alleges that so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicants' disclosure, such a reconstruction is proper.

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a. Hindsight reconstruction is not proper.

In response, Applicants respectfully submit that the Office has not presented a *prima facie* case that each and every element of Applicants' claims were within the knowledge which was within the level of ordinary skill at the time the claimed invention was made.

2. Section (10) Response to Argument – Hydrophobic Surface

In Section (10) of the Examiner's Answer mailed December 27, 2007, page 4, the Office alleges that Applicants argue that the superabsorbent material of the present invention has a hydrophobic surface based on the process by which the superabsorbent material is made, such as by a spinning process. The Office alleges that Applicants argue that the superabsorbent material of Bashaw would tend to be hydrophilic since it is pulverized or chopped, which has the effect of exposing additional hydrophilic groups located below the surface of the copolymer, contributing to its hydrophilic nature. The Office also alleges that Applicants argue the superabsorbent of the present invention is hydrophobic because it is produced in a spinning process and the process results in a different fiber than the fiber resulting from a pulverization process. The Office alleges that although the specification mentions the surface of SAF is made hydrophobic during the fiber spinning process, a web made according to a spinning process is not claimed. Further, the Office alleges that if Applicants intend to prove the materials are different and this causes significant swelling in the Bashaw invention, then the material should be compared. The Office alleges that if Applicants intend to demonstrate the processing of the superabsorbent results in differences in wettability, then the processes should be compared.

a. Hydrophobic surface is claimed.

In response, Applicants respectfully note that the claims require that the superabsorbent has a hydrophobic surface. Applicants further respectfully clarify that Applicants state in the Appeal Brief that "such hydrophobic surface may be present based on the process by which the superabsorbent material is made, such as by a spinning process, or for other reasons". (Appeal Brief dated September 24, 2007, page 9, *emphasis added*).

3. Conclusion

For the reasons stated above, as well as in the Appeal Brief dated September 24, 2007, Appellants respectfully submit that the rejections of the claims on appeal are in error and the Office's

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rejection of claims 22 - 36 should be reversed by the Board. Appellants do not believe that any fee is due; however, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 11-0875. The undersigned may be reached at 920-721-4405.

Respectfully submitted,

JIAN QIN ET AL.

By: 

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CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant, hereby certify that on February 27, 2008 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.


Mary L. Marchant